

**IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE**

<p><b>FILED</b></p> <p>January 30, 1998</p> <p><b>Cecil W. Crowson</b> Appellate Court Clerk</p>
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RITA SIMS, )  
)  
Plaintiff/Appellee, )  
)  
VS. )  
)  
MARGARET CULPEPPER, )  
Tennessee Department of )  
Employment Security; and )  
SUPERIOR HOME HEALTH CARE )  
OF MIDDLE TENNESSEE, INC., )  
a Tennessee corporation, )  
)  
Defendant/Appellant. )

Maury Chancery  
No. 95-134

Appeal No.  
01A01-9605-CH-00229

APPEAL FROM THE MAURY COUNTY CHANCERY COURT  
AT COLUMBIA, TENNESSEE

THE HONORABLE JIM T. HAMILTON, CHANCELLOR

For Plaintiff/Appellee:

Tom W. Moore, Jr.  
Moore & Peden  
Columbia, Tennessee

For Defendant/Appellant:

J. Scott McDearman  
Grant, Konvalinka & Harrison  
Chattanooga, Tennessee

**REVERSED AND REMANDED**

WILLIAM C. KOCH, JR., JUDGE

## OPINION

This appeal involves a request for unemployment compensation benefits. An employee of a home healthcare agency filed for unemployment compensation benefits after she resigned from her job because she was not “comfortable” completing required interim audits of the patients’ care. She filed suit in the Chancery Court for Maury County after the Department of Employment Security Board of Review denied her claim on the ground that she had voluntarily quit her job without good cause. The trial court found that the employee had left her employment for good cause and, accordingly, reversed the Board. We have determined that the record contains substantial and material evidence supporting the Board’s decision and, therefore, reverse the trial court and affirm the Board’s decision.

### I.

Rita Sims went to work for Superior Home Health Care of Middle Tennessee, Inc. (“Superior Home Health”) in October 1992 as a billing specialist. Her written employment agreement stated that she was an employee-at-will, that she agreed to perform “such duties as may be assigned by [Superior Home Health], including, but not limited to, the duties described in the job description of [billing specialist].” The agreement also stated that Ms. Sims’s job description “in no way states or implies that these are the only duties to be performed by this employee. He or she will be required to follow any other instructions and to perform any other duties requested by his or her supervisor.”

One of Superior Home Health’s responsibilities as a recipient of Medicare funds was to document the treatment being given to its patients. While federal regulations required quarterly audits to determine the adequacy of each patient’s plan of care, Superior Home Health instituted an internal quality control system requiring the preparation of internal audits of each patient’s care. These interim audits provided the data used to complete the quarterly Medicare audits that were prepared for Superior Home Health by an outside consultant.

When Superior Home Health fell approximately six months behind in preparing its interim audits, Ms. Sims's supervisor temporarily assigned her to assist the audit nurses in catching up on the audits. Ms. Sims had been trained on the completion of these audit documents. Since this assignment required her to work harder, Ms. Sims requested a raise. When Superior Home Health denied her request for a raise, Ms. Sims requested that she be permitted to return to her billing work. When her supervisor replied that she needed to continue working on the interim audits until they were caught up, Ms. Sims insisted that she did not like working on the audits and that she did not feel qualified to do the work.

In the spring of 1994, Ms. Sims again informed her supervisor that she was "not comfortable" working on the interim audits and that she did not "feel like [she] could do [her] best at this job." Her supervisor again told her that the choice was not hers and that Superior Home Health expected her to continue working on the interim audits until they were caught up. Very soon thereafter, Ms. Sims refused to work on the interim audits and left her employment on March 21, 1994.

The Department of Employment Security denied Ms. Sims's application for unemployment compensation on the ground that she had terminated her employment voluntarily. When the Department of Employment Security Appeals Tribunal determined that she was eligible for benefits, Superior Home Health appealed to the Department of Employment Security Board of Review. The Board of Review remanded the claim to the Appeals Tribunal for lack of a record due to a malfunction in the equipment used to record the Appeals Tribunal's hearing. Upon rehearing, the Appeals Tribunal determined that Ms. Sims had, in fact, voluntarily terminated her employment without good cause. The Board of Review adopted the Appeals Tribunal's findings and conclusions.

Ms. Sims filed a petition for writ of certiorari in the Chancery Court for Maury County on March 1, 1995. The trial court reversed the Board of Review's decision after finding that the record lacked substantial and material evidence to support the Board of Review's denial of unemployment compensation benefits. The trial court also declared that Ms. Sims was entitled to unemployment compensation benefits

because she had left her employment with Superior Home Health for good cause related to the work. Superior Home Health has perfected this appeal.

## II.

Tennessee's unemployment compensation statutes provide a system of temporary compensation to help support workers who become unemployed through no fault of their own. The system is expressly aimed at ameliorating the harsh economic effects of involuntary unemployment on workers and their families. *See* Tenn. Code Ann. § 50-7-102(a) (1991). Accordingly, workers who leave their jobs "voluntarily without good cause connected with . . . [their] work" are not entitled to receive unemployment compensation benefits. Tenn. Code Ann. § 50-7-303(a)(1) (Supp. 1997); *Ford v. Traughber*, 813 S.W.2d 141, 144 (Tenn. Ct. App. 1991). While the statute does not define "good cause," we must construe that term in light of the public policy behind the unemployment compensation statutes. *Wallace v. Sullivan*, 561 S.W.2d 452, 455 (Tenn. 1978).

The standards for judicial review of administrative decisions in unemployment compensation proceedings are well-settled. The administrative hearing panels have the primary responsibility to determine a claimant's eligibility for unemployment compensation. The courts may reverse, modify, or remand these decisions only when the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) arbitrary or capricious or characterized by either abuse of discretion or clearly unwarranted exercise of discretion; or (5) unsupported by evidence which is both substantial and material in light of the entire record. *See* Tenn. Code Ann. § 50-7-304(i)(2)(A)-(E) (Supp. 1997).

Substantial and material evidence means "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." *Southern Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn. 1984). When called upon to review the Board of Review's decision under Tenn. Code Ann. § 50-7-304(i)(2)(E), the

reviewing courts may not second-guess the Board of Review's decisions concerning the weight of the evidence and should not reverse, remand, or modify the Board of Review's decision in the absence of some error of law affecting the merits of the Board of Review's decision. *See* Tenn. Code Ann. § 50-7-304(i)(3) (Supp. 1997); *Perryman v. Bible*, 653 S.W.2d 424, 429 (Tenn. Ct. App. 1983).

The appellate courts' task under Tenn. Code Ann. § 50-7-304(i)(3) is to take a fresh look at the Board of Review's decision, not the lower court's decision. *See Gilley v. Culpepper*, App. No. 01A01-9611-CH-00521, 1997 WL 284625, at \*2 (Tenn. Ct. App. May 30, 1997) (No Tenn. R. App. P. 11 application filed). Accordingly, we will confine ourselves to the decisions of the Appeals Tribunal and the Board of Review.

Ms. Sims's written employment agreement unmistakably stated that Superior Home Health had the right to determine the scope of her work and to assign her to tasks that were consistent with the company's "philosophy and goals." Although she was originally assigned to work as a billing specialist, Ms. Sims was also trained to complete interim audit forms. After her request for a salary increase was denied, Ms. Sims complained that she was somehow uncomfortable working with the interim audits. Rather than requesting additional training or other assistance, she left her job because she did not like the work and preferred her original assignment.

The record contains substantial and material evidence that working with the internal audits was within the proper scope of Ms. Sims's assignments and that Superior Home Health could properly assign her to work on these forms. Because the record lacks any objective, credible basis for concluding that Ms. Sims was not properly trained to work with the internal audit forms, the Appeals Tribunal and the Board of Review had adequate factual support for their finding that Ms. Sims voluntarily quit her job without good work-related cause.

### **III.**

We reverse the trial court's decision and affirm the decision of the Department of Employment Security Board of Review. We also remand the case to the trial court for whatever further proceedings consistent with this opinion may be required and tax the costs of this appeal to Rita Sims for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUDGE

CONCUR:

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HENRY F. TODD, PRESIDING JUDGE  
MIDDLE SECTION

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SAMUEL L. LEWIS, JUDGE